HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1069 of 2005 (MS)
Smt. Renu Tyagi

Vs.

Additional District Judge / 1st F.T.C.
Roorkee Distt. Haridwar.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 10.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1069 (MS) OF 2005

Smt. Renu Tyagi,
W/o late Pushpendra Tyagi,
R/o 164/6 Purvawali Ganeshpur,
Railway road, Roorkee,
District-Haridwar. .....Petitioner.

Versus

1. Additional District Judge/1st Fast Track Court, Roorkee, District Haridwar.
2. Bharat Ram, S/o Sri Tek Chand, R/o 165 D.L. Road Dalanwala, Dehradun (Owner Truck No. U.P. 07G-0396).
3. The Oriental Insurance Co. Ltd., through Divisional Manager, Divisional Officer, Near Jwalapur Post Office Jwalapur, Haridwar (Insurance Company of Truck No. U.P. 07G 0396 Cover Note No. 392472 validity 23-1-03 to 22-12-04).
4. Satish Kumar, S/o Sri Stapal, R/o Village Purangarh, P.O. Bapa District Yamunanagar (Owner Pulser Motorcycle Engine No. 42303 Chasis No. 42766).
5. IFCO Tokio General Insurance Companies Ltd., through Manager Office Plot No. 2 B.R.C. Sector 28 A Madhya Marg Chandigarh 1000002) Insurance Company Pulser Motorcycle Engine No. 42303 Chasis No. 42866 Cover Note No. 31324994 Validity dt. 12-5-04 to 11-5-05.

.....Respondents.

Dated: 10.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Navneet Kaushik, Advocate for the petitioner and Standing Counsel for the respondent no. 1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 8th August, 2005 passed by Additional District Judge/1st F.T.C. Roorkee District Haridwar in Misc Case No. 20/2005. further prayer has been made for a writ of mandamus directing the respondents not to give effect to the impugned order dated 08.08.2005 till the pendency of present petition.

Briefly stated, the petitioner preferred an MACT Case No. 99 of 2004 before the Court of 1st FTC/ADJ Roorkee District Haridwar along with Smt. Sheela and Sri Banarsi Das

The aforesaid case was dismissed by the Court of Addl. District Judge/First F.T.C. Roorkee, District Haridwar in absence of the petitioner on 04.07.2005.

Thereafter, according to the petitioner, she moved an application on 18.07.2005 before the respondent no. 1 under Order 9 Rule 4 of the Code of Civil Procedure with the averments that due to inadvertent mistake of the counsel for the petitioner, the date in the matter was wrongly recorded in the diary as 14.07.2005 in spite of 04.07.2005 and when the petitioner's Advocate made an appearance on 14.07.2005 before the Court it came to his knowledge that the mater was listed on 04.07.2005 and therefore, the matter has been dismissed for non-appearance of the parties. The said application of the petitioner was rejected by the respondent no.1.

It is well established that any technicalities of law should not come in the way of dispensation of justice. The restoration

application, therefore, cannot be rejected so as to deprive the party from arguing the matter on merits.

The apex Court in the case of ***Ram Nath Sao @ Ram Nath Sahu and Others. Vs. Gobardhan Sao and others 2002 Supreme Court & Full Bench Rent Case, Page 440*** has held as under:-

"The expression 'sufficient' cause' within the meaning of Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Act') Order XXII, Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code') as well as similar other provisions and the ambit of exercise of powers there under have been subject matter of consideration before this Court on numerous occasions. In the case of State of West Bengal v. The Administrator, Howrah Municipality and others (1972) 1 Supreme Court Cases 366, while considering scope of the expression 'sufficient cause within the meaning of Section 5 of the Act, this Court laid down that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party."

The need of society is that there should be justice oriented approach and the matter should not be rejected only on the ground of technicalities. The Apex Court has held in ***(2001) 8 SCC 151, M.S. Grewal Vs. Deep Chand Sood*** as under:-

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In ***N. Balakrishnan Vs. M.Krishnamurthy, 1998 S.C.F.B. and Rent Cases Page 427***, It has been held that law of limitation is founded in public policy on '*the maxim of interest reipublicae up sit finis litium*' i.e. fal the general welfare, it has been held as under:-

> "*The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause*".
>
> "*Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life spen must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They*

are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation".

In view of the above, a writ of certiorari is issued quashing the order-dated 08.08.2005. The matter is sent back to the court of Addl. District Judge/1st F.T.C. Roorkee, District Haridwar, who shall decide the matter on merits in accordance with law. The petitioner has undertaken to cooperate with the hearing of the suit and shall not seek unnecessary adjournments.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

10.07.2006
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